IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1384 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MANOJ DILIPKUMAR JOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1384 of 2001
MS KRISHNA U MISHRA for Petitioner No. 1
Mr. H.L. Jani, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/07/2001

ORAL JUDGEMENT

Heard learned advocate Ms. Mishra for the petitioner and the learned AGP Mr. Jani for the respondents. In this petition under Article 226 of the the Constitution of India, the petitioner has challenged

the impugned order of detention dated 22nd November, 2000 passed by the Commissioner of Police, Surat City whereunder the petitioner has initially been ordered to be detained at the District Jail at Bhuj and thereafter, has been transferred to Sabarmati Jail as Class II detenu. According to the grounds of detention communicated to the petitioner, in all, four offences have been registered against the petitioner wherein last offence registered is dated 12th July, 2000. In all the offences, the petitioner was enlarged on bail by the competent court. The petitioner has been considered to be dangerous person as defined under section 2(c) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("the PASA Act" for short). The statements of the secret witnesses were recorded on 29th October, 2000 and verified on 30th October, 2000 and were verified by the detaining authority on 16th November, 2000. As per the grounds of detention, the petitioner has been involved in two unregistered offences dated 14th June, 2000 and 22nd July, 2000 as noted by the detaining authority. The impugned order of detention has actually been executed on 5th December, 2000.

2. In this petition, the respondents have not filed any affidavit in reply to the present petition.

3. Learned advocate Ms. Mishra appearing for the petitioner has raised various contentions challenging the impugned order of detention. However, according to her, one or two contentions are enough to vitiate the impugned order of detention and, therefore, she has submitted that looking to the facts on record, considering the date of the last registered offence, 12th July, 2000 and the involvement of the petitioner in last unregistered offence which is dated 22nd July, 2000, there is delay of about four months in passing the impugned order of detention which has remained unexplained and, therefore, in view of such an unexplained delay in passing the impugned order of detention, the petition is required to be allowed by quashing and setting aside the impugned order of detention. She has placed reliance upon the decision of this court reported in 1997(1) GLH page 381, para 21.

Learned AGP Mr. Jani has submitted that looking to the material on record and considering the facts of the case, there were compelling circumstances for passing the impugned order of detention and, therefore, according to him, the impugned order of detention is legal and valid and this court is not required to interfere with the same.

Looking to the date of the last offence registered against the petitioner and also the involvement of the petitioner in unregistered offence and considering the date of the impugned order of detention, as per my view, there is delay of about four months in passing the impugned order of detention which has not been explained by the detaining authority.

In case of Elesh N. Patel versus Commissioner of Police, Ahmedabad, this Court has held as under in para 21 of the report :

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 5, 1996 i.e. after a delay of five months and fifteen days. If is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the supreme court in Anand Prakash v. State of UP reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli. SCC 61."

Therefore, in the facts of the present case and also in view of the aforesaid decision in case of Elesh N. Patel (supra), considering the unexplained delay of about four months in passing the impugned order of detention, the same is required to be quashed and set aside.

In the result, this petition is allowed. Impugned order of detention dated 22nd November, 2000, actually effected on 15th December, 2000 passed by the detaining authority is quashed and set aside. The

petitioner detenu Manoj Dilipkumar Joshi who has been detained in Sabarmati Jail Ahmedabad is ordered to be released forthwith if he is not required in any other case. Rule is made absolute accordingly with no order as to costs. DSP.

9.7.2001. (H.K.Rathod,J.)

Vyas